

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

SIGHTSOUND TECHNOLOGIES LLC,)
)
Plaintiff) Case No.
)
v.)
)
APPLE, INC.,)
)
Defendant)

COMPLAINT

Plaintiff SightSound Technologies LLC (“SightSound”), by its undersigned counsel, complains upon causes of action against Apple Inc. (“Apple”), of which the following is a statement:

NATURE OF THE ACTION

1. SightSound brings this action to seek damages arising out of the infringement by Apple of U.S. Patent Nos. 5,191,573, 5,675,734, and 5,966,440 (collectively, the “Patents-In-Suit,” copies of which are attached hereto at Exhibits A, B, and C, respectively).

2. Plaintiff SightSound Technologies LLC is a Delaware limited liability corporation with a place of business at 311 South Craig Street Suite 104, Pittsburgh, PA 15213.

3. Defendant Apple Inc. is a California corporation with a principal place of business at 1 Infinite Loop, Cupertino, CA 95014.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over SightSound’s claims of patent infringement pursuant to 28 U.S.C. § 1338(a) because the claims arise under the Patent Act, 35 U.S.C. § 281.

5. This Court has personal jurisdiction over Apple because, on information and belief, Apple regularly and systematically transacts business in this District.

6. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b), 1391(c) and 1400(b) because on information and belief, Apple has committed, and intends to commit, acts of infringement in this District.

RELATED CASES

7. *Sightsound.com Inc. v. N2K, Inc. et al* (2:98-cv-0118-DWA) was filed in this Court on January 16, 1998, alleging infringement of U.S. Patent Nos. 5,191,573 (“the ‘573 patent”) and 5,675,734 (“the ‘734 patent”) by N2K, Inc., CDNow, Inc., and CDNow Online, Inc. This Court construed the claim terms of the patents on February 8, 2002 (Dkt #105), and amended that construction on April 2, 2003 (Dkt #113). The parties entered into a consent judgment on February 20, 2004 (Dkt #228).

8. *Sightsound Technologies, Inc. v. Roxio, Inc. et al* (2:04-cv-01549-DWA) was filed in this court on October 8, 2004 alleging infringement of the Patents-In-Suit by Roxio, Inc. and Napster L.L.C. The case was stayed on February 28, 2005 (Dkt #50) pending the completion of re-examination by the US Patent and Trademark Office (“PTO”) of the Patents-In-Suit. On May 31, 2006 (Dkt #72), the case was administratively closed pending final resolution by the PTO.

9. Napster L.L.C. submitted an ex parte reexamination request to the PTO on January 31, 2005, which was granted.

10. The PTO issued an Ex Parte Reexamination Certificate for the ‘573 patent on November 30, 2010.

11. The PTO issued an Ex Parte Reexamination Certificate for the ‘734 patent on December 14, 2010.

12. The PTO issued an Ex Parte Reexamination Certificate for U.S. Patent No. 5,966,440 (“the ‘440 patent”) on July 27, 2010.

BACKGROUND

13. SightSound is the owner by assignment of all right, title, and interest in the Patents-In-Suit.

14. The Patents-In-Suit include system claims for systems that sell digital video and/or digital audio signals. The Patents-In-Suit also include method claims for methods for performing the same.

COUNT ONE – INFRINGEMENT OF U.S. PATENT NO. 5,191,573

15. SightSound incorporates by reference its allegations in Paragraphs 1 through 14 inclusive.

16. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently making, using, offering for sale, and/or selling products and/or methods that infringe one or more claims of the ‘573 patent, literally or under the doctrine of equivalents.

17. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently inducing or contributing to the infringement of one or more claims of the ‘573 patent.

18. Such activities by Apple as described in Paragraphs 16 and 17, above, violate one or more subsections of 35 U.S.C. § 271.

19. On information and belief, Apple's infringement of the '573 patent has been and continues to be willful and wanton because Apple has had notice of the '573 patent.

20. SightSound has suffered economic harm as a result of Apple's infringing activities in an amount to be proven at trial.

COUNT TWO – INFRINGEMENT OF U.S. PATENT NO. 5,675,734

21. SightSound incorporates by reference its allegations in Paragraphs 1 through 20, inclusive.

22. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently making, using, offering for sale, and/or selling products and/or methods that infringe one or more claims of the '734 patent, literally or under the doctrine of equivalents.

23. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently inducing or contributing to the infringement of one or more claims of the '734 patent.

24. Such activities by Apple as described in Paragraphs 22 and 23 above, if proven, violate one or more subsections of 35 U.S.C. § 271.

25. On information and belief, Apple's infringement of the '734 patent has been and is willful and wanton because Apple has had notice of the '734 patent.

26. SightSound has suffered economic harm as a result of Apple's infringing activities in an amount to be proven at trial.

COUNT THREE – INFRINGEMENT OF U.S. PATENT NO. 5,966,440

27. SightSound incorporates by reference its allegations in Paragraphs 1 through 26 inclusive.

28. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently making, using, offering for sale, and/or selling products and/or methods that infringe one or more claims of the ‘440 patent, literally or under the doctrine of equivalents.

29. On information and belief, and based on likely evidentiary support after a reasonable opportunity for further investigation or discovery, Apple has been and is presently inducing or contributing to the infringement of one or more claims of the ‘440 patent.

30. Such activities by Apple as described in Paragraphs 28 and 29 above, if proven, violate one or more subsections of 35 U.S.C. § 271.

31. On information and belief, Apple’s infringement of the ‘440 patent has been and is willful and wanton because Apple has had notice of the ‘440 patent.

32. SightSound has suffered economic harm as a result of Apple’s infringing activities in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, SightSound prays that this Court grant it the following relief:

- (a) enter judgment against Apple adjudging the ‘573, ‘734, and ‘440 patents to be valid, enforceable and infringed;
- (b) award SightSound an amount adequate to compensate for Apple’s infringement of the Patents-In-Suit, as provided under 35 U.S.C. § 284;
- (c) an adjudication that Apple has willfully infringed the Patents-In-Suit and increasing the award of damage to SightSound up to three times in view of Apple’s willful infringement;

(d) a declaration that this is an exceptional case under 35 U.S.C. § 285 and that SightSound be awarded its attorneys' fees and costs incurred in prosecuting their claims as provided under 35 U.S.C. § 285; and

(e) such other relief as this Court deems proper.

A trial by jury is hereby demanded.

Dated: October 10, 2011

Of Counsel:

Matthew Wolf
Marc Cohn
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004
Telephone: (202) 942-5000
Facsimile: (202) 942-5999

James DiBoise
Michael Berta
ARNOLD & PORTER LLP
22nd Floor
One Embarcadero Center
San Francisco, CA 94111
Telephone: (415) 356-3000
Facsimile: (415) 356-3099

MEYER, UNKOVIC & SCOTT LLP

By: /s/ Russell J. Ober, Jr.
Russell J. Ober, Jr.
PA. ID #17364
rjo@muslaw.com
535 Smithfield Street, Suite 1300
Pittsburgh, Pennsylvania 15222
Telephone: (412) 456-2800

Attorneys for Plaintiff
SightSound Technologies LLC